



PLANNING

MEETING OF THE GREENSBORO BOARD OF ADJUSTMENT FEBRUARY 27, 2017

The regular meeting of the Greensboro Board of Adjustment was held on Monday February 27, 2017 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Cyndy Hayworth, Chair, Patti Eckard, Laura Blackstock, Enyonam Williams, Mike Cooke, Mary Skenes. Representing the Planning Department staff was Loray Averett, Nicole Smith; and Andrew Kelly, City Attorney's Office.

Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Ms. Eckard moved to approve the minutes of the January 27, 2017 meeting, seconded by Ms. Williams. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Loray Averett and Nicole Smith were sworn in for their testimony regarding matters coming before the Board.

CONTINUANCES/WITHDRAWALS

Ms. Averett stated that there were no continuances or withdrawals.

Mike Cooke arrived at 5:48 p.m. for the remainder of the meeting.

In response to questions about alternate members and regular members on the Board, Ms. Averett stated that if Mr. Truby arrives for the meeting, Mr. Cooke will be considered a replacement for Mark Cummings. Mr. Cummings did send his resignation letter in but she has not received confirmation of Mr. Cooke's appointment to the Board, so technically, he would not be able to sit unless he is replacing a regular member. That seat is currently vacant according to the information she has received from the Clerk's office. Since Chuck Truby is not in attendance at this time, Mike Cooke can sit in for Mr. Truby. There will be a six (6) – member Board with six (6) members present.

NEW BUSINESS**VARIANCE**

- (a) **BOA-17-06: 1401 RED SAIL LANE** John Forbis requests a variance from a minimum rear setback requirement. **Variance:** An existing attached carport encroaches 15.1 feet into a 30-foot rear setback. Section 30-7-3.2 Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street – Gramercy Road. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for an existing attached carport which encroaches 15.1 feet into a 30-foot rear setback. The lot is located at the northwestern intersection of Gramercy Road and Red Sail Lane. The property is a corner lot. Tax records reflect the lot size is approximately 18,295 square feet. The house was constructed in 1978. The lot is an unusual shape due to the curve of the property line adjacent to Red Sail Lane. The existing house was constructed with the front orientation to Red Sail Lane. Prior to the 2014 adoption of the average front setback requirement, the orientation of a house did not factor into minimum setback requirements. On corner lots, the previous Development Ordinances allowed houses and additions to be constructed so long as the structure complied with setbacks, with no impact regarding orientation of the structure. In 1982, the applicant applied for an easement release to add the carport to the house. The release request was approved and the carport was constructed in a time-frame following that approval. The applicant has recently applied for a Building Permit to construct an addition to the front of his house which faces Red Sail Lane. That request will meet average front setbacks. The front setback was determined based on orientation of the house fronting on Red Sail Lane. The results of this determination causes the carport to encroach into a rear setback. The applicant was offered the option to move forth with his current request for a building permit. He was also offered the option to apply for the variance concerning the carport encroachment or he could leave the carport as is, noting that the carport is non-conforming. The applicant chose to move forth with a variance request to correct the existing encroachment. There is also a small (10 feet x 8 feet) detached storage building located at the center north-eastern portion of the subject lot. This building is located in an easement. The applicant has applied for an easement release for this area of the site. The Planning Board will hear that release request at their February 15, 2017 meeting. The detached storage building does meet setbacks and there no variances required, only the easement release, due to buildings/structures may not be located in an easement area. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak in favor of this request.

John Forbis, the applicant, stated that the maps provided show the position of the carport location on the property. He presented a notarized letter from one of his neighbors who support his request for this variance. The house was built in 1978 and he now wishes to make an addition to the house to improve the property and expand the interior living spaces. There are other properties within the neighborhood that have made additions in the recent past. He does not feel that this addition would be intrusive to the character of the neighborhood.

Mr. Truby arrived at 5:59 p.m. but did not sit on the Board.

Chair Hayworth asked if there was any opposition to the request. There being none, the public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their full support of the request as it is felt that this addition would not be intrusive in the surrounding neighborhood.

Ms. Skenes moved that in regard to BOA-17-06, 1401 Red Sail Lane, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and a variance be granted based on the following: If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property because the existing carport was constructed in 1982 and prior to 2014, when the ordinance was changed. At the time it was built, it was in compliance. Due to the ordinance change in 2014, the new request for a front addition the carport must receive a variance to be conforming. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicant's property because due to the multiple easements and the irregular shape of the lot, the building area is severely restricted and without a variance the carport would be non-conforming. The hardship is not the result of the applicant's own actions because the irregular shaped lot and utility easements, even with the release of part of the easement, because those easements were in place and because of the development ordinance change. The applicant did all that could be done at the time. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the carport has been in place since 1982 when an easement release was granted and at the time it was conforming, seconded by Ms. Eckard. The Board voted 6-0 in favor of granting the variance. (Ayes: Hayworth, Blackstock, Cooke, Eckard, Williams and Skenes. Nays: None.)

Mr. Forbis came forward to thank staff for their excellent help in obtaining the requested variance.

BOARD DISCUSSION:

Mr. Truby stated that he apologizes for being so late arriving for the meeting. Ms. Averett explained that there may be an unappointed seat with the resignation of Mark Cummings. Chair Hayworth stated that it was her understanding that when Mr. Truby arrived, that he could sit on the Board and then Mr. Cooke, since he is not an appointed member, would release the seat. Ms. Averett stated that staff has looked at the policy concerning seating based on when and how an alternate and a regular member can sit on the Board. Mr. Cooke would be sitting for Mr. Truby. Upon Mr. Truby's arrival, because he was late for the meeting, may not be switched back and there is no other alternate seat. Counsel Kelly stated that is what the rules say. Mr. Truby stated that was fine with him, he just wanted to make sure that he was not causing any problems by not being at the meeting earlier.

Loray Averett read into the record, "A regular member who appears after the opening of the hearing will take on an alternate status for the duration of that meeting." Counsel Kelly stated that an alternate can only come on for an appointed member and there are now only six (6) appointed members. Chair Hayworth asked for clarification that Mike Cooke would stay seated for the duration of the meeting, and Chuck Truby cannot sit because there is no vacant seat? Loray Averett stated that was correct. Chair Hayworth thanked Mr. Truby for trying to attend and sit at the meeting.

- (b) BOA-17-07: **4823 COUNTRY WOODS LANE** Choudry and Tayba Buttar request a variance from a minimum front setback requirement. **Variance:** A proposed single-family dwelling will encroach approximately 148 feet into a required average front setback of approximately 188 feet. The proposed dwelling will be setback at a minimum of 40 feet. Section 30-7-1.4, Present Zoning-R-3 (Residential Single-family), Cross Street-Joseph Bryan Boulevard. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed single-family dwelling which will encroach approximately 148 feet into a required average front setback of approximately 188 feet. The proposed dwelling will be setback at a minimum of 40 feet. The property is located on the south/eastern side of Country Woods Lane, north of Joseph M. Bryan Boulevard and is zoned R-3. It is considered a through lot with two street setbacks. The lot has frontages on Country Woods Lane and Joseph M. Bryan Boulevard and contains 2.07 acres. This property was annexed into the City on June 30, 1996. There are only two houses located east of the subject site that may be used in calculating the average setback for the vacant subject lot. There are no houses or lots located west of the subject site that meet the requirement for averaging calculations. The average setback was determined using the two houses nearest the subject site on the same block face. The house located at 4821 Country Woods Lane is approximately 116 feet from the front property line and the house located at 4819 Country Woods Lane is approximately 260 feet from the front property line; thus the average setback for 4823 Country Woods Lane was determined to be 188 feet from the front property line. The applicant is requesting to be allowed to construct his house 40 feet from the front property line instead of the averaged setback of 188 feet. The lot is an irregular shaped lot. One side lot line is 130 feet longer than the other side lot line which causes a severe angle on the lot line adjacent to Bryan Boulevard. The property has less depth than the other two lots nearest the subject that was used for the average calculated setback. The Plot plan identified as Exhibit B also shows the lot will be developed with a septic tank and well location. Exhibit 4 contains summary minutes from a similar request that was heard and approved at the February 23, 2015 meeting. The difference of that request and this one is the proposed setback amount. The house in the 2015 request was proposed to be setback 50 feet from the front property line and this house is proposed to be setback 40 feet from the front property line. Deed records reflect the previous owner sold this lot to the current owners on March 6, 2015. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak in favor of this request.

Choudry Buttar, the applicant, was previously sworn in and stated that he would let his contractor speak for him.

Tony Johnson, 3395 Travis Court, Summerfield, NC, Builder for the applicant of the property, was previously sworn in and stated that the 2014 development ordinance has created a situation where they cannot build the house based on what the other houses that were built previously have done. There is well and septic on the property and this variance came up during the normal permitting process with the City. If they are unable to obtain the variance, the house would sit right on Bryan Boulevard, which makes the property unbuildable. In response to questions by the Board members, Mr. Johnson stated that he has heard of no objections from the neighbors. Most of the surrounding houses are so far back of their properties that he does not feel this would be an invasion and they would also be able to save the existing trees as a buffer.

Chair Hayworth asked if there was any opposition to the request. There being none, the public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their full support of the request as it would not be intrusive to the surrounding neighborhood.

Ms. Eckard moved that in regard to BOA-17-07, 4823 Country Woods Lane, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and a variance be granted based on the following: If the applicant complies with the provisions of the ordinance unnecessary hardships will

result to the property because the lot is unusual in size and shape and has a severe angle to it and without the variance, the space could not be used efficiently and could be considered unbuildable. The hardship of which the applicant complains results from the conditions that are peculiar to the property, and unique circumstances related to the applicant's property because the only other location would be pushing the house back towards Bryan Boulevard, which would require cutting down and cause more noise to the whole neighborhood, also, the lot is not deep enough to comply with the setback requirements. The hardship is not the result of the applicant's own actions because the previous homes built in the area cause a problem with the setback requirements of the proposed home. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the variance would make the lot more attractive and more buildable for the owners and should add value to the property and maintain the public safety of the neighborhood, seconded by Ms. Skenes. The Board voted 6-0 in favor of granting the variance. (Ayes: Hayworth, Blackstock, Cooke, Eckard, Williams and Skenes. Nays: None.)

- (c) BOA-17-08: **2302 CREEKWOOD DRIVE** Maha Elobeid requests a variance from a required average front setback. **Variance:** A proposed front addition will encroach approximately 14 feet into a required average front setback of approximately 39 feet. The proposed addition will be setback 25 feet from the front property line. Present Zoning-R-3 (Residential Single-family), Section 30-7-1.4, Cross Street - Pennoak Road. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed front addition. The proposed addition will encroach 14 feet into a consistent front setback of approximately 39 feet. The addition will be setback 25 feet from the front property line. The lot is located on the western side of Creekwood Drive west of Pennoak Road. Tax records reflect the lot size is approximately 12,895 square feet and is rectangular shaped. The house was originally built in 1989. The survey indicated the house is located 40.3 feet from the front property line. The applicant is proposing to construct an addition to the front of the house. The proposed addition will be 15 feet by 18 feet for a total of 270 square feet. The 2300 block of Creekwood Road only contains two houses that are oriented towards the street. They are 2300 Creekwood Drive and the subject site. The house on the corner, south of the subject site and addressed as 2311 Braceyr ridge Road is oriented to Braceyr ridge Road. The only property that could help determine consistent average front setback was the property located at 2300 Creekwood Road, as shown on Exhibit B. This house is approximately 39 feet from the front property line. Effective April 4, 2014 infill standards for residential front setbacks were implemented. Prior to that implementation, the front setback for the R-3 zoning district was district was 25 feet. The applicant is requesting to be allowed to construct the front addition which will be approximately 25.0 feet from the front property line instead of the averaged setback of 39 feet. The R-5 Residential Single-family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak in favor of this request.

Maha Elobeid, the current owner, 801 Valley Oak Drive, was previously sworn in and was available to answer questions.

Mr. Elobeid Elobeid, 2302 Creekwood Drive, was previously sworn in and stated that he is trying to make an addition of 15 feet by 28 feet to the front of the house. The proposed addition is because of his large family. This is the best location for the proposed addition because of the layout of the existing house.

Chair Hayworth asked if there was any opposition to the request. There being none, the public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their full support of the request as it did not appear to be intrusive to the neighborhood and if the request had come in before 2014, there would not be a need for a variance for this property.

Ms. Blackstock moved that in regard to BOA-17-08, 2302 Creekwood Drive, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and a variance be granted based on the following: If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property by applying strict application of the ordinance because the addition could not be constructed and a kitchen expansion is needed within the house. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the property because this is the most logical location on the property for the addition to the house. The hardship is not the result of the applicant's own actions because the house was built in 1989, which was before the ordinance entered in 2014 regarding implementation of front setbacks. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the intent is to preserve the spirit of the ordinance and no harm will come to the public, seconded by Ms. Skenes. The Board voted 6-0 in favor of granting the variance. (Ayes: Hayworth, Blackstock, Cooke, Eckard, Williams and Skenes. Nays: None.)

Chair Hayworth asked that the last case on the agenda be moved and heard at this time.

- (e) **BOA-17-10: 2021 ST. ANDREWS ROAD** Jack W. Britts requests a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. Variance: The applicant is proposing to have a separate electrical meter for an existing detached pool-house. Section 30-8-11.1(G), Present Zoning-R-3 (Residential Single-family), Cross Street-Carlisle Road. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on a proposed detached accessory pool-house. The property is located on the south side of St. Andrews Road east of Carlisle Drive and is zoned R-3 (Residential Single Family). Tax records indicate the house was originally constructed in 1954. The lot contains 1.47 acres. The property contains a 2-story dwelling, accessory pool and pool-house. The house is located on the northern front portion of the property. The detached pool-house is located behind the house and closer to the southern portion of the lot. The applicant is requesting to place a detached meter on the pool-house. The meter will supply power for a heat pump - pool heater. He has mentioned there is a power supply close to his rear lot line. The area between the house and the building is developed with existing infrastructure consisting of hardscape parking areas, patio and existing landscaping. The applicant is aware that the detached pool-house building must serve the property as a personal use accessory building. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak in favor of this request.

Jack Britts, the applicant, was previously sworn in and stated that the main reason for this request is that his gas pool heater went out and he wants to replace it with a more economical and efficient electric heat pump. There is currently electrical service going out to the pool shed but the current infrastructure does not support the additional amperage that would be needed. The service now comes in from the southeast side of the house and there is electrical service almost directly behind the pool house on the property line, so it would be more reasonable to connect to that location as a solution. He also owns the adjacent property.

Chair Hayworth asked if there was any opposition to the request. There being none, the public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their full support of the request as it seems to provide better efficiency and use for the property.

Mr. Cooke moved that in regard to BOA-17-10, 2021 St. Andrews Road, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and a variance be granted based on the following: If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property because the property owner would have to trench out and apply new electrical lines to be able to obtain electricity to the existing pool house. The hardship of which the applicant complains results from the conditions that are peculiar to the property because the existing service was shared on the property some time ago. The hardship is not the result of the applicant's own actions because the electrical service was likely there when the applicant purchased the home. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it allows the private property owner to do what is feasible on his property, seconded by Ms. Blackstock. The Board voted 6- in favor of granting the variance. (Ayes: Hayworth, Blackstock, Cooke, Eckard, Williams and Skenes. Nays: None.)

- (d) BOA-17-09: **411 GALLIMORE DAIRY ROAD** Colonial Pipeline Company request variances from a separation standard and a minimum fence height requirement. **Variance #1:** All operations for petroleum products are required to be 50 feet from any property line. An existing containment area is located 20 feet from the Boulder Road Right-of-way line. It is encroaching 30 feet in to a 50-foot setback requirement. The applicant is requesting to expand operations in this area. The existing operation and a future planned expansion will not exceed the current setback. Section 30-8-10.5 (1) (a), Present Zoning-HI (Heavy industrial) & BP (Business Park). **Variance #2:** Tanks are required to be 500 feet from any residential zoning district. An existing tank is located 216 feet from a residentially zoned property. The tank encroaches 284 feet into the required 500-foot separation requirement. Section 30-8-10.5 (1) (b), Present Zoning-HI (Heavy industrial) & BP (Business Park). **Variance #3:** Security fencing at least 8 feet in height must be provided around the perimeter of the operation. The existing perimeter fencing is 7 feet in height, thus the applicant is seeking a reduction of one-foot from the requirement. Section 30-8-10.5 (2), Present Zoning-HI (Heavy industrial), BP (Business Park), AG (Agriculture) and R-3 (Residential-Single-family) Cross Street – South Chimney Rock Road. **(GRANTED)**

Loray Averett stated that the applicants request variances for: #1: All operations for petroleum products are required to be 50 feet from any property line. An existing containment area is located 20 feet from the Boulder Road Right-of-way line. It is encroaching 30 feet in to a 50-foot setback requirement. The applicant is requesting to expand operations in this area. The existing operation and a future planned expansion will not exceed the current setback. #2: Tanks are required to be 500 feet from any residential zoning district. An existing tank is located 216 feet from a residentially zoned property. The tank encroaches 284 feet into the required 500-foot separation requirement. #3: Security fencing at least 8 feet in height must be provided around the perimeter of the operation. The existing perimeter fencing is 7 feet in height, thus the applicant is seeking a reduction of one-foot from the requirement. The property is bound by four streets/highways. They are identified as Interstate 40 East, Gallimore Dairy Road, South Chimney Rock Road and Boulder Road. In its entirety, the property consists of five tracts of land which total approximately 338.85 acres. The five tracts consist of multiple zoning districts with the primary tract containing 268.52 acres. This tract has a split zoning. The majority of the tract is zoned HI (Heavy Industrial). There is a small portion located along the southern lot line which is zoned (BP) Business Park. The remaining four tracts are zoned BP (Business Park), R-3, (Residential Single-family) and AG (Agriculture). The existing land use was established prior to the requirement of a Special Use Permit. Since there are multiple zonings on these five tracts of land and planned future development, the applicant has submitted application to rezone the property and to acquire a Special Use Permit. This land use requires HI (Heavy Industrial) zoning along with a Special Use Permit. As the owners move forth with their additional properties along with any proposed site changes, staff noted that there were nonconformities associated to the property. Those nonconformities were identified as - Operations that were not 50 feet from a property line adjacent to Boulder Road; Tank spacing from residentially zoned property and minimum security fence height requirements. Each item is required to have its own motion and vote. Variance #1: All operations for petroleum products are required to be 50 feet from any property line. An existing containment area is located 20 feet from the Boulder Road Right-of-way line. It is encroaching 30 feet in to a 50-foot setback requirement. The applicant is requesting to expand vehicular operations in this area. The existing operation and any planned construction expansion will not exceed the current setback of 20 feet. Variance #2: Tank Separation from Residentially Zone Property: There is an existing tank located 216 feet from a vacant R-3 residentially zoned lot. The tank perimeter appears to be enclosed by a container. It is required to be 500 feet from the any residential zoning district. Variance #3: Security Fencing that is not a minimum of 8 feet tall: The property is required to be enclosed with security fencing at least 8 feet tall. The existing security fence is 7 feet tall. The HI, Heavy Industrial District is primarily intended to accommodate a wide range of assembling, fabricating, and manufacturing activities. The district is established for the purpose of providing appropriate locations and development regulations for uses which may have significant environmental impacts or require special measures to ensure compatibility with adjoining properties.

Chair Hayworth asked if there was anyone wishing to speak in favor of this request.

Brian Pearce, attorney representing the applicant, 701 Green Valley Road, stated that even though the property has existed many years, new and updated ordinances have had some impacts on the property and the non-conforming situations.

Brian Pearce presented some information for the Board members' review and stated that they are requesting three variances. There is one variance that relates to the fence height; another variance that relates to a petroleum tank that is within the 500 feet of the residentially zoned property; and a variance for the new area that is being developed for an off-load area. Touching first on the fence height, which is currently 7 feet and meets all the regulations along with the fact that this complex is very heavily federally regulated, the fence has been in place since the complex was built.

Loray Averett pointed out that prior to 2010, with the Heavy Industrial sites were required to have fences at a minimum height of 6 feet. In 2010, with the adoption of the LDO the fence height was changed from 6 feet to 8 feet in height. The adoption of the LDO created a non-conformity concerning the fence height. Chair Hayworth stated that her concern is that the fence is not adequately high enough to protect the property from vandalism or damages and/or trespassing.

Brian Pearce stated that he is unsure if the 7 foot height of the existing fence includes the barbed wire or not. He reminded the Board that this fence has been in place for many years and they are considering a legal non-conforming situation to correct the non-conformity. Raising the fence by one foot on this property would be an enormous cost to the owners. The fence was built in conformity at the time it was built and it is not the owner's fault that it is now non-conforming because of a change in the ordinance. In regard to the off-load area, looking at the second drawing, it shows the trucks that would come to this area to off-load the petroleum into existing tanks. This drawing also shows the fence line and there is a large right-of-way on the property, and that is what is cutting into the setback. The distance from the middle of the road to where the off-load area is going to start, is actually 63.9 feet in one location. From the curb to the corner is 66.6 feet, so if it weren't for the width of the right-of-way area, the 50 would have been met, but as a result of the large right-of-way, to fit this in, they would have the 20.1 foot distance. So that is the reason for the variance request. The aerial photos shown indicate the area and the distances they have to work with. He has notified the adjacent owners and has not received any opposition from them. He explained the photographs presented and asked that the Board support this request for the three variances.

Chip Little, 1185 Sanctuary Parkway, Alpharetta, GA., Colonial Pipeline, was previously sworn in and stated that he is the Manager of Government Affairs for Colonial Pipeline Company and they operate 5,500 miles of pipeline from Houston, Texas to New York City. Along that line they provide unleaded gasoline, diesel fuel, jet fuel and home heating oil. The Greensboro facility is their largest facility in the U.S. and fuel comes here from Houston, Texas along two lines, and fuel is stored in Greensboro and then distributed throughout the eastern seaboard to meet those needs. The Greensboro facility is regulated by FEMSA, which is a federal agency that oversees the operations, not only with regard to security, but also how the facility is operated and maintained, including the tanks that are part of the facility. From a security standpoint there is 24-hour security at the facility. In addition, there are other means of security at the facility which are part of Homeland Security. They meet regularly with the NC Army National Guard for security updates and they have an excellent relationship with the Fire Department, which is a model for other cities. They are proud to be a good corporate citizen for the City and participate with the Red Cross, Junior Achievement and Piedmont Land Conservancy.

Brent Bailey, Commercial Director of Integration with Texon, 11757 Caty Freeway in Houston, Texas, was previously sworn in and stated that they have been working with the city for about a year and a half with their Planning Department to try and get a handle on how to do things right at the beginning. They intend to construct a bio-diesel blending operation at the property. Bio-diesel is a biodegradable, non-hazardous material that is as combustible as paper. It is not made from fossil fuels, but is made from corn or used cooking oil, used animal fats and things of that nature. That bio-diesel is then blended into diesel as it runs up the pipeline and they will contract with a trucking firm with some dedicated trucks to handle this bio-diesel fuel. There will probably be 15-18 trucks per day visiting the site. The trucks will pick up product from a transloading facility, bring the product to the facility and off-load it.

In response to a question posed by Ms. Williams in regard to why this is not the result of the applicant's own actions, Mr. Pearce stated that as far as they know, when that tank was built there is no evidence that it wasn't permitted, that if it were not in compliance, they would not have been able to build it. That tank has been in place for many years now and it is felt that it should be able to remain in place and operation as it has been all this time. Mr. Little stated that the construction on that tank started in 2005 and was entered into service in 2006. Loray Averett stated that it would not be uncommon that the Planning Department did not review that tank as it was not a building or a structure. The process for tank location reviews by the Planning Department has been improved in more recent years. The estimated guess is that the Fire Marshall review was involved with the tank at that time. Their criteria would not have included the ordinance spacing requirement. Mr. Little stated that at that time they would have had state approvals as well as federal approvals and probably worked closely with the Fire Department to review the plans for the tank.

Chair Hayworth asked if there was any opposition to the request. There being none, the public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request for all three of the variance requests as the vacant property that is adjacent takes away the concern of the distance factor.

Ms. Williams moved that in regard to BOA-17-09, 411 Gallimore Dairy Road, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and all three variances be granted based on the following: If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property because with regard to the 50 foot setback, the owner will not be able to expand the property use by adding an off-loading area for the trucks. With regard to the 500 foot residential setback the tank would need to be removed and it has been in place since 2006. With regard to the fence, the massive fence would need to be increased in height by 1 foot, which would be cost prohibitive. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicant's property because for (A), the 50 foot setback has an extremely large right-of-way in this area; for (B) with regard to the residential matter, the property is large and the topography varies; with regard to the fence, again, the property is large and the fence encloses about 330 acres. The hardship is not the result of the applicant's own actions because the Land Development Ordinance changed after the land was developed; the applicant was unaware of being non-conforming at the time of construction; and the fence was in compliance with the ordinance when it was built. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it will allow the owner to use the property to its highest and best use; and the nearest residential area is undeveloped, seconded by Ms. Blackstock. The Board voted 6-0 in favor of granting all three variances. (Ayes: Hayworth, Blackstock, Cooke, Eckard, Williams and Skenes. Nays: None.)

OTHER BUSINESS

Loray Averett stated that a discussion was planned for tonight's meeting concerning average front setbacks. She asked if the Board members wanted to continue with the discussion, or table them until the March meeting. After some discussion, the Board members determined that they would rather wait until the March meeting to hold this discussion. In regard to the family care homes, Mr. Cooke felt that it is futile to continue discussions on this matter because there are laws that already address that. Chair Hayworth suggested that the Board members look over the information provided by staff and be ready to have discussions on these issues at the March meeting.

Chair Hayworth asked that staff make sure that City Council is made aware of any vacant seats that require appointments. Timely appointments are necessary for the Board's ability to hear cases and make decisions.

ACKNOWLEDGEMENT OF ABSENCES

None (Truby was in attendance after the meeting opened)

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There being no further business before the Board, the meeting adjourned at 7:35 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair
Greensboro Board of Adjustment

CH/jd